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October 23, 1990

Robert N. Wilson, Clerk
Court of Appeal, State of California
Division Four
3580 Wilshire Blvd.
Los Angeles, California 90010

Re: Church of Scientology of California and Mary Sue Hubbard, Appellants v. Gerald Armstrong, Defendant; Bent Corydon, Appellee; Civ. No. B038975

Dear Mr. Wilson:

Counsel for Appellants, Eric Lieberman, recently brought to the Court's attention, by letter to Division Four, a recent Sixth District decision, Philippine Export and Foreign Loan Guarantee Corp. v. Chuidian, 218 Cal. App.3d 1058, which he claims offers guidance for this Court's consideration of the above-referenced appeal respecting the sealing and unsealing of court files. With all due respect to Mr. Lieberman, the case is not on point and the authorities are not instructive on the present issue. If the Court is inclined to consider the arguments presented by Mr. Lieberman as a supplemental brief, Appellee Bent Corydon replies thereto by this letter.

The appeal herein is taken from an order vacating a prior stipulated order for the sealing of the court files. The stipulated sealing order was part of an agreement which permitted Appellants to prosecute their appeal of the decision on the underlying complaint. Appellants argue, in part, that when sealing orders are sought by the parties as part of a settlement, such orders are bargained for considerations which the courts are powerless to vacate. However, there was no overall settlement and termination of the litigation of the kind present in Philippine Export in the present action. Although the agreement in this case provided for dismissal of the cross-complaint, it is expressly required that Appellants be permitted to appeal the adverse decision after the trial on the complaint and to re-try

their claims if permitted by the appellate decision. Furthermore, assuming arguendo a situation similar to Philippine Export were presented in this appeal, it would still not support Appellants' position. In fact, it has no bearing on this appeal.

First, Philippine Export arose in a procedural and factual setting that is very different from the present matter. In Philippine Export, the court was asked to set aside a stipulated judgment which terminated complex litigation. The stipulation included a "warranty of silence" about the settlement terms, called for turning over one party's depositions and required that a declaration of uncertain truthfulness be made. The entity which sought to vacate the judgment contended that the settlement terms had been coerced and therefore the judgment was illegal in purpose because it required perjury and concealment of evidence. Thus, that party now contended that the judgment was void. Because the action arose in the context of an effort to vacate a judgment, the applicable standard was extremely narrow: affirmance of the trial court's judgment was necessary "if any applicable ground [would] sustain the court's order". 218 Cal.App.3d at 1077 citing Marriage of Jacobs (1982) 128 Cal.App.3d 273.

In contrast, Respondent Bent Corydon does not seek to vacate a judgment: the sealing order in issue here was not part of a stipulated judgment terminating litigation. Rather it was part of an interlocutory order dismissing only the cross-claim of Gerald Armstrong pursuant to an agreement which expressly preserved the right to appeal by the Church of Scientology of California from the judgment on the complaint. Thus the standards applicable to stipulated judgments are not applicable here. Furthermore, even looking only at the public policy perspective in allowing sealing of court records in order to facilitate settlements and to promote the resulting economic and other benefits to the parties and a conservation of judicial resources, those benefits are not applicable here since there were no such benefits to either the parties or the court.

Appellant directs our attention to a section of Philippine Export which refers to two cases cited by both Appellants and Respondent herein in their briefs, specifically, Estate of Hearst (1977) 67 Cal.App.3d 777, 136 Cal.Rptr. 821 and Mary R v. B & R Corp. (1978) 149 Cal.App.3d 308, 196 Cal.Rptr 871. Importantly, the Sixth District opinion does not analyze those decisions nor does it address the standards for sealing files in any fashion. Rather, it merely pointed out that, as those cases indicate, that sealed court records "are presumptively available to the public on proper showing of necessity". In fact, as was more fully set forth in Respondent's brief, in both of these cases, the court of

appeal rejected the lower courts' approval of sealing on the facts before them on public policy grounds and had merely observed, in dicta, that sealed files may be unsealed. Thus, Appellants insert a red herring by stating the obvious, ie. that a sealed file might be opened. However, the question before this court is whether the Armstrong files were properly sealed in the first place. And, if the standards for sealing were met, it further requires the court to consider the standards for unsealing the file and, whether, under those standards, Bent Corydon demonstrated adequate need for access.

The Sixth District Court of Appeal did not analyze, as this Court must, the full meaning of Hearst and Mary R. It had no need to do so as the standards under which court files may be sealed was not before it; the fact that the file in that case was sealed was only an incidental result of the overall stipulated judgment and was never addressed substantively by the Court. Accordingly, Corydon respectfully requests that the Court reject the analysis offered by Appellants of that case.

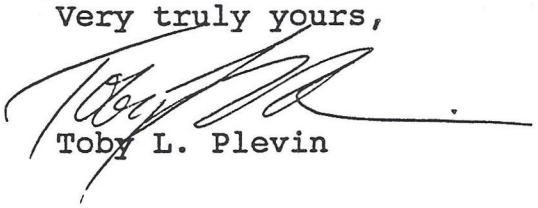
The error of Appellants' reasoning becomes even more obvious when considering their reference to Chuidian v. Philippine National Bank (D.C. Cal 1990) 734 F.Supp. 415. Mr. Lieberman quotes a portion of that opinion to the effect that settlements with silencing provisions and stipulated sealing orders serve the publicly useful purpose of settling cases and the avoidance of disclosure of embarrassing information. The opinion goes on to say that such agreements are not illegal because they do not suppress evidence. Indeed, since most settlements occur before trial and before exposure of private or embarrassing information in public records occurs, there is no suppression of evidence. However, that Court emphatically distinguished that situation from situations where parties seek to suppress witness testimony or information required by the government to be disclosed which the Court described as the illegal suppression of evidence, a distinction that Appellants also noted.

The sealing order in this case and the overall settlement suppress the declarations and testimony not only of Gerald Armstrong by sealing the file but also of all the witnesses who testified in the trial below by concealing the transcript thereof. Indeed, the motive of settling in this case was not to prevent disclosure of information regarding Appellants since the matter had already been tried but must be seen instead as an attempt to suppress the information that had already been made part of a previously open file and a previously public trial. REspondent hopes the Court will not be confused by the fact that this lawsuit involved the alleged conversion of personal documents since the release or unsealing of those documents is not in issue: they have been delivered to Appellants and are not

part of the court file.

Accordingly, the district court opinion strongly suggests that the order here was, at the least, against public policy as the illegal suppression of evidence.

Very truly yours,



Toby L. Plevin

cc: All Counsel of Record.